

Matter of Golembiowski v Port Auth. of N.Y. & N.J.
2018 NY Slip Op 32702(U)
October 18, 2018
Supreme Court, New York County
Docket Number: 652672/2018
Judge: Eileen A. Rakower
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EILEEN A. RAKOWER PART IAS MOTION 6EFM

Justice

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INDEX NO. 652672/2018

IN THE MATTER OF THE APPLICATION OF DAVID
GOLEMBIOWSKI

MOTION DATE _____

Petitioner,

MOTION SEQ. NO. 1

For an Order Pursuant to Article 75 of the CPLR
Vacating the Arbitration Award in the Matter of Arbitration Between
The Port Authority of New York and New Jersey and Port Authority
Police Benevolent Association, Docket No. 1404.

- v -

PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

DECISION AND ORDER

Respondent.

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Petitioner, David Golembiowski (“Petitioner”), has filed a Petition seeking to vacate an arbitration award, pursuant to CPLR §7511, that determined that respondent Port Authority of New York and New Jersey (“Respondent” or “Port Authority”) had just cause to terminate Petitioner and denied Petitioner’s grievance against Port Authority. Petitioner contends that he “was prejudiced by the execution of the Arbitrator[‘s] powers ‘so imperfectly’ in violation of his rights to due process” and that the penalty imposed “is irrational and ... disproportionate to the offices (sic) alleged as to be shocking to the court’s sense of fairness.”

Respondent interposed a Verified Answer to the Verified Petition with Objections in Point of Law. Respondent contends that the Verified Petition should be dismissed because service of process was improper, and there is no personal jurisdiction over Port Authority. Respondent also contends that Petitioner’s application to vacate the arbitration award should be denied because Petitioner has failed to demonstrate a proper basis to warrant vacatur.

Oral argument on the Petition was scheduled on October 16, 2018. Respondent appeared for oral argument. Petitioner did not appear. The Court has proceeded to render a determination on the Petition on the papers in the instant decision.

Factual Allegations/Background

Commencing on September 27, 2002, Petitioner was employed by Port Authority as a police officer. On November 19, 2008, Petitioner was served with Charges and Specifications (“Specifications”) containing one charge of substantial violation of the General Rules and Regulations For All Port Authority Employees and five Specifications based on a meeting on May 23, 2008 at a diner in Bethpage, Long Island. On November 19, 2009, Petitioner was administratively suspended.

On May 23, 2008, Petitioner joined his father, Walter (Wally) Golembiowski, and his father’s friend, “Paul,” in the Bethpage, New York. Wally was a retired NYPD Police Officer and then a Supervisory Customs and Border Patrol Inspector at JFK Airport. “Paul” was a custom’s broker. Unknown to Petitioner and Wally at the time of the meeting, Paul was cooperating with federal authorities as a Confidential Source in their investigation of corruption by U.S. Customs Inspectors and others at JFK Airport.

The Specifications alleged that at the May 23, 2008 meeting, Petitioner (1) “discussed and agreed to participate in a plan to establish a fictitious corporation (in [his] wife’s name) in order to allow illegal payments to be made to [his] father Walter Golembiowski (a United States Customs Inspector-Supervisor)”;

(2) “accepted \$1,000.00 in dollars in U.S. currency from a confidential informant of the U.S. Drug Enforcement Agency”;

(3) “told the informant, ‘Is there anybody at the airport you want me to harass? I will break their balls, pull them over and write some summonses,’ or words to that effect;”

(4) “discussed confidential Port Authority police business,” including “using [his] position as a Port Authority police officer to conduct official police computer searches to gain unauthorized information and how that information could be utilized from those searches;” and

(5) “surrendered a duplicate police shield to supervisors from the Internal Affairs Division” on August 7, 2008 after he had been placed on administrative suspension and been ordered to surrender his service weapon and police credentials.”

A hearing was conducted in New York County on June 20, 2017, June 21, 2017, and October 4, 2017, before an arbitrator, John B. Dorsey. The limited issue presented to the Arbitrator was whether the Port Authority had just cause to terminate Petitioner.

The Arbitrator issued a written decision, dated February 20, 2018, in which he concluded that the Port Authority had just cause to terminate the Petitioner from

service. The Arbitrator concluded, “after review of the three days of hearings, the entire record and the Parties[sic] post hearing briefs, ... the [Port] Authority has met its burden of establishing [Petitioner] was guilty of Specifications 1 through 5 and violated the General Rules and Regulations for all Port Authority Employees.” The Arbitrator wrote that based on his observations of Petitioner during the hearings, “[t]here can not [sic] be a single doubt [Petitioner] knew from the very beginning of the May 23, 2008 meeting what his father and Paul were discussing and planning to do was totally illegal.”

Personal Jurisdiction

Respondent contends that service of process was improper in this action, and therefore there is no personal jurisdiction over the Port Authority.

CPLR § 7502(a) requires that a special proceeding be used “to bring before a court the first application arising out of an arbitrable controversy which is not made by motion in a pending action.” A special proceeding must be commenced in a manner sufficient to confer personal jurisdiction. CPLR § 304 provides that “[a] special proceeding is commenced by filing a petition.” Thereafter, the petitioner must serve the respondent with a “notice of petition, together with the petition and [supporting] affidavits.” Pursuant to CPLR § 403(c), a “notice of petition shall be served in the same manner as a summons in an action.”

CPLR § 307(2) governs the methods to obtain personal service over state agencies. It provides, in pertinent part, that that service upon a state agency must be made by (1) delivering the summons to the chief executive officer of the agency or a person designated by the chief executive officer to receive service; or (2) mailing the summons by certified mail, receipt requested, to the chief executive officer or a person designated by the chief executive officer to receive service.

On the Port Authority website, it provides the following under “Notice of Location for Service on The Port Authority of New York and New Jersey,”

Personal service of Notices of Claim, Summonses and Complaints, or Subpoenas for records and other documents to be made on the Port Authority or its wholly-owned corporate entities (including Port Authority Trans-Hudson Corporation, the Newark Legal and Communications Center Urban Renewal

Corporation, or the New York and New Jersey Railroad Corporation) that must be served upon a corporate officer of the Port Authority or of the respective entity in the State of New York may be made at 4 World Trade Center, 150 Greenwich Street, 23rd Floor, New York, New York 10007.

Here, according to the Affirmation of Service filed by Petitioner on May 29, 2018, the Petition with Notice of Petition and accompanying exhibits were served on Sharon McGhee, Esq., the attorney who had represented the Port Authority in the underlying arbitration proceeding, via overnight mail. Respondent contends that “Ms. McGhee was and still is not authorized to accept service on the behalf of the Port Authority.”

Here, the “first application arising out of the arbitrable controversy” was Petitioner’s special proceeding to vacate the arbitration award. Therefore, Petitioner was required to serve the Petition on “the chief executive officer or a person designated by the chief executive officer to receive service,” not Respondent’s counsel in the underlying proceeding. Accordingly, Petitioner failed to properly serve the Petition on Port Authority. Therefore, this Court lacks personal jurisdiction over Port Authority, and the Petition is denied and dismissed. *See generally Application of Country Wide Ins. Co.*, 114 A.D.2d 754 (1st Dep’t 1985) (holding that service of petition to set aside arbitration award by certified mail upon attorneys who had represented respondent in no-fault arbitration proceeding was improper and insufficient to confer personal jurisdiction over respondent pursuant to CPLR § 308; *Scott v. Allstate Ins. Co.*, 45 A.D.3d 690, 691 (2d Dep’t 2007) (holding that since the petitioner's special proceeding to vacate arbitration award was the “first application arising out of arbitrable controversy,” the petitioner properly served notice of petition, petition and supporting papers on respondent, instead of respondent's counsel pursuant to CPLR § 2103(b), as there was no pending action).

Wherefore, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: October 18, 2018



EILEEN A. RAKOWER, J.S.C.